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09/971,141	10/04/2001	Laurie E. Gathman	US 010496	4048

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EXAMINER	
OUELLETTE, JONATHAN P	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAURIE E. GATHMAN and JACK HAKEN

Appeal 2008-1484
Application 09/971,141
Technology Center 3600

Decided: December 23, 2008

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU R. MOHANTY, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection of claims 1 to 21. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellants invented a method and system for making public facility information available by dissemination through a virtual ticket device (Specification 1).

Claim 1 under appeal reads as follows:

> 1. In a public facility in communication with at least one patron though a virtual ticket device (VTD) interface, a method of doing business, comprising:
>
> detecting that a VTD is within communication range of the VTD interface;
>
> determining the identity and location of the detected VTD; and
>
> selectively providing information to the identified VTD on the basis of the determined identity and location.

The Examiner rejected claims 1 to 4, 9 to 16, and 18 to 21 under 35 U.S.C. § 102(e) as being anticipated by Brown.

The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Poor.

The Examiner rejected claims 5, 6, 8, and 17 under 35 U.S.C. § 103(a) as being unpatentable over Brown.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Brown	US 2003/0061303 A1	Mar. 27, 2003
Poor	US 2004/0263494 A1	Dec. 30, 2004

Appellants contend that Brown does not disclose a virtual ticket device.

ISSUE

Have Appellants shown that the Examiner erred in finding that Brown discloses a virtual ticket device?

FINDINGS OF FACT

1. Appellants disclose a method of doing business which allows a public facility information guide to be operable through a virtual ticket device ("VTD") (Specification 7).

2. The VTD is a portable computer system that accepts and retains virtual tickets for sporting events, theater, concerts, and the like (Specification 7).

3. In its simplest form, the VTD is an existing smart telephone, cellular communication-enabled personal digital assistant ("PDA") (Specification 7).

4. The term "VTD" as used in Appellants' specification and claims is not limited or restricted to a device which is actually used or even programmed to authorize a customer's admission to the facility (Specification 8).

5. Admission authorization, which may be a part of the virtual ticket, may include the date and location of the event, the seat number and the price paid (Specification 8).

6. The principles of the Appellants' invention may be implemented in any suitably arranged hand-held electronic organizer, PDA, or advanced mobile telephone (Specification 12, 21).

7. Brown discloses a method of doing business including the steps of detecting when a specific user PDA is within communication range of a PDA interface ([0009], [0013]).

8. Information regarding the time and location of events is provided to the PDA based on the identity and location of the PDA ([0014] to [0015]).

9. The Brown PDA is a VTD within the meaning of Appellants' Specification because the PDA provides the date and location of an event.

PRINCIPLES OF LAW

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir.), *cert. denied*, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

It is well settled that apparatus claims must distinguish over prior art apparatus by the structure defined by the claims, and not by a process or function performed by the apparatus. A prior art apparatus having the same or obvious structure as a claimed apparatus renders a claimed apparatus unpatentable under Section 102 as long as it is capable of performing the claimed process or function. *In re Yanush,* 477 F.2d 958, 959 (CCPA 1973); *Ex Parte Masham,* 2 USPQ2d 1647, 1648 (BPAI 1987).

ANALYSIS

We are not persuaded of error on the part of the Examiner by Appellants' argument that Brown does not disclose a VTD because the PDA of Brown does not issue virtual tickets.

First, claim 1 does not require that the VTD issue virtual tickets but only that the VTD be provided with information based on the determined identity and location.

Second, Appellants' own Specification states that a VTD is not limited or restricted to a device which is actually used or even programmed to authorize a customer's admission to the facility (Finding of Fact 4). As such, the disclosure in Brown that the PDA sends information to the user regarding the location and time of events is sufficient for the PDA of Brown to be a VTD.

Finally, even if it is necessary that a VTD issue virtual tickets to meet the limitation of claim 1, it is not necessary that Brown teach that the PDA therein disclosed issues virtual tickets, only that the Brown PDA is capable of issuing virtual tickets. The Brown PDA is clearly capable of issuing virtual tickets according to Appellants' disclosure (Finding of Fact 6).

In view of the foregoing, we will sustain the Examiner's rejection of claim 1. We will also sustain this rejection as it is directed to claims 2 to 4, 9 to 16 and 18 to 21 because the Appellants have not argued the separate patentability of these claims.

We will also sustain the Examiner's rejections of (1) claim 7 under 35 U.S.C. § 103 as being unpatentable over Brown and Poor and (2) claims 5, 6, 8 and 17 under 35 U.S.C. § 103 as being unpatentable over Brown

because the Appellant relies on the arguments made in regard to claim 1 in addressing these rejections.

DECISION

The decision of the Examiner is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

hh

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